

RECEIVED
DEPARTMENT OF HEALTH SERVICES

AUG 22 1985

HEARINGS & INVESTIGATION:
DIVISION OF MEDICAL
QUALITY ASSURANCE

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR OPTICIANS

U.S. VISION, INC.,
dba LEASED OPTICAL
dba WALL AND OCHS
GERALD COUTURE, L.O. NO. 575

DEPARTMENT OF HEALTH SERVICES

MEMORANDUM OF DECISION

The Board of Examiners for Opticians was presented by the Department of Health Services with a Statement of Charges dated March 5, 1985 and with a Motion for Summary Suspension. The Statement of Charges alleged violations of §§ 20-153 and 20-154 of the Connecticut General Statutes.

The Board issued a Notice of Summary Suspension Proceedings which provided that the Motion for Summary Suspension would be considered on March 12, 1985. The proceeding was postponed and took place on March 18, 1985. The Board denied the Motion for Summary Suspension.

A hearing on the Statement of Charges was held on April 29, 1985.

Each member of the Board of Examiners for Opticians involved in this decision attests that he has reviewed the record of the proceedings and that this decision is based entirely on the record.

Facts

1. U.S. Vision, Inc., dba Leased Optical and dba Wall and Ochs, at all pertinent times was operating under an optical permit granted by the State of Connecticut, Department of Health Services.

2. Gerald Couture, at all pertinent times was licensed as an optician by the State of Connecticut, Department of Health Services.

3. Roger Paquette, at all pertinent times was licensed as an optician by the State of Connecticut, Department of Health Services.

4. Edward Talaniec, at all pertinent times was licensed as an optician by the State of Connecticut, Department of Health Services.

5. Kenneth Collier, at all pertinent times was licensed as an optician by the State of Connecticut, Department of Health Services.

6. Julius Schmidt, at all pertinent times was licensed as an optician by the State of Connecticut, Department of Health Services.

7. On or about September 24, 1984, U.S. Vision allowed Carol Labate to operate Optical Shop No. 1182, located at G. Fox in Hartford, without a licensed optician on the premises.

8. On or about January 8, 1985, U.S. Vision allowed Anne Comp to operate Optical Shop No. 1304, located at G. Fox in Meriden, without a licensed optician on the premises.

9. On or about January 29, 1985, U.S. Vision allowed Anne Comp to operate Optical Shop No. 1304, located at G. Fox in Meriden, without a licensed optician on the premises.

10. On or about January 29, 1985, at Optical Shop No. 1304, Anne Comp assisted Gary Griffin, an investigator for the Department of Health Services, in selecting eyeglasses, made visual measurements indicating what style and size frame would be appropriate for his face and measured the pupillary distance of his eyes. At no time during this process was Anne Comp supervised by a licensed optician.

11. On or about February 23, 1985 at Optical Shop No. 1304 Anne Comp fitted Gary Griffin with eyeglasses, making adjustments to the frames. There was no licensed optician present.

12. On or about February 25, 1985, U.S. Vision allowed Sharon Kutchera to operate Optical Shop No. 1274, located at Sears in Orange, without a licensed optician on the premises.

13. On or about March 1, 1985 U.S. Vision allowed Janet Nedbal Sober to operate an optical shop located at Wall and Ochs, Fairfield, Permit No. 1199; without a licensed optician on the premises.

14. On or about February 28, 1985, U.S. Vision allowed Carol Labate to operate Optical Shop No. 1050, located at G. Fox in Waterbury, without a licensed optician on the premises.

15. On or about March 4, 1985, U.S. Vision allowed Shirley Calandro to operate Optical Shop No. 1291, located at G. Fox in Farmington, without a licensed optician on the premises.

16. On or about March 4, 1985, U.S. Vision allowed Robin Lima to operate Optical Shop No. 1029, located at Read's in Danbury, without a licensed optician on the premises.

Discussion and Conclusions

17. Connecticut General Statutes § 20-154 provides in pertinent part that:

The certificate of registration, permit or license of any optician or of any optical permittee may be revoked, suspended or annulled or any action taken under section 19a-17 upon decision after notice and hearing by the board for any of the following reasons: violation of any provision of this chapter or any regulation adopted hereunder ...

18. Connecticut General Statutes § 20-153 provides in pertinent part that:

The department may grant annually, upon the filing of an application as required by it, an optical permit to any optical establishment, office, department or store conducted under the personal and direct supervision of a licensed optician, for permission to sell, dispense or supply to the ultimate wearer optical aids to vision, instruments, appliances, eyeglasses, spectacles and other kindred products. (Emphasis added.)

Counts 1, 2, 3, 6, 7, 8, 9, 10

19. Section 20-153's mandate that a store be conducted under the "personal and direct supervision" of a licensed

optician requires that an optician be present on the premises whenever the store is open. U.S. Vision claims that their policy of not permitting apprentices to dispense, fit or measure customers for eyeglasses on the days when no optician is working meets the statutory standard. The Board disagrees. First, the statutory language grants no exceptions. Once a store is opened for business and given a permit it has to be under the direct and personal supervision of a licensed optician at all times. Second, there are practical reasons why the statute requires the presence of a licensed optician whenever the optical establishment is open. The probability is high that when an optical shop is open, a customer will have services performed which should be done under the direct supervision of a licensed optician even when no licensed optician is in fact on the premises. In fact, Counts 4 and 5 in this case demonstrate how this situation occurs. Therefore, U.S. Vision is in violation of Conn. Gen. Stat. §§ 20-153 and 20-154.

20. The Department has alleged violations of §§ 20-153 and 20-154 not only by U.S. Vision, Inc. but also by the individual licensed opticians who manage each store. In the Department's Proposed Findings of Facts (Exhibit B), the Department

states that a licensed optician is required to sign each optical permit. However, there is nothing in the record supporting this statement. The optical permits of each shop were not submitted into evidence. Without such evidence, the Board can find no basis to place a duty on the individual licensed opticians to ensure that the store at which they are employed comply with § 20-153.

Counts 4 and 5

21. U.S. Vision concedes that the services which Anne Comp performed for Gary Griffin were improper. These services should not have been performed without the supervision of a licensed optician. As such, they constitute violations of Conn. Gen. Stat. §§ 20-153 and 20-154.

Count 11

22. This count is dismissed. Engaging in a course of conduct "with the intent to violate" does not state a violation over which the Board has jurisdiction. In addition, were this count to be read as not requiring any evidence of intent, it would not state a separate violation.

ORDER

Pursuant to its authority under Conn. Gen. Stat. §§ 20-153, 20-154 and 19a-17, the Board of Examiners for Opticians hereby orders the following:

(1) That U.S. Vision be fined five hundred dollars (\$500) for each of ten separate counts of violations of Conn. Gen. Stat. § 20-153 and § 20-154. A check for \$5,000 should be made payable to the State of Connecticut and be submitted within 30 days.

(2) That U.S. Vision discontinue its current practice of allowing their optical shops to be open for business when a licensed optician is not on the premises.

(3) That failure of U.S. Vision to comply with the terms of this order will result in further disciplinary action.

Board of Examiners for Opticians

August 12, 1985
Date

E. Craig Fritz
BY: E. Craig Fritz